IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 132 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT ON BEHALF OF P K VASAIYA

Versus

PRADIPKUMAR ROSHANLAL JAIN

Appearance:

MR BY PRAJAPATI, A.P.P. for Appellant.

MR HR PRAJAPATI for Respondent No. 1

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 21/12/2000

ORAL JUDGEMENT

This Criminal Appeal is arising out of the incident which took place on 16-7-1998. On that day the Deputy Director, (Civil Supplies), Gujarat State, Gandhinagar visited the diesel tanks No. 1 and 2 of the diesel pump owned by the respondent. The said Deputy Director took a sample of the diesel for analysis. That

sample was sent for analysis and on analysis of the said sample, it was found that there was an adulteration of kerosene of blue colour in diesel. It is the case of the present appellant that the respondent had adulterated the diesel by adding the kerosene and thus it was the case of the appellant that the respondent has contravened the provisions of Clause 16 of the Gujarat Essential Articles (Licencing, Control and Stock Declaration) Order, 1981 and Clauses 2 and Clause 2 (b) 2 (e) and 5 of the Schedule - A of the Motor Spirit and High Speed Diesel (Prevention Mal-practices and Distribution) Order, 1990 and Clauses 16 and 22 of the Control Order and that all these contraventions are punishable u/s 7 of the Essential Commodities Act, 1985 (which will hereinafter be referred to as the Act).

2. For the said offences, one Mr. P. K.. Vasaiya, Deputy Mamlatdar (Civil Supplies) office of the Mamlatdar, Devgadh Bariya, filed the complaint in the police station. That complaint came to be registered as C.R. No. 73/98. That case was investigated by the police and ultimately he filed the charge sheet against the respondent in the Court of the learned Judge who presided over as Judge of the Special Court constituted under Section 12 (A) of the Act (He will be referred to hereinafter as the learned Judge of the trial Court). That charge sheet came to be registered as Special Case (under the Essential Commodities Act) No. 8 of 1999. In that case, the plea of the respondent was recorded on 30-3-1999. He pleaded not guilty to the charge. Therefore, the prosecution examined certain witnesses and produced and proved certain documents. Thereafter, the learned Judge of the trial Court recorded the further statement of the accused u/s 313 of the Cr. P. C.. Thereafter, after hearing the arguments of the learned advocates for both the parties and after analysing and appreciating the evidence led by the prosecution, the learned Judge of the trial Court convicted the respondent of this appeal who was the accused of Special Case No. 8 of 1999 for not maintaining Density Register for the period from 10-7-1998 to 17-7-1998 and for that contravention the learned Judge of the trial Court sentenced the respondent to undergo simple imprisonment for the period till rising of the Court and to pay a fine of Rs.3000/-, i/d to undergo further rigorous imprisonment for three months. The original accused has not preferred any appeal against the said conviction and sentence rendered by the learned Judge of the trial Court. The State Government has preferred this present appeal u/s 377 of the Cr. P. C. for enhancement of the sentence.

3. As per the plea of the accused recorded by the Judge of the trial Court on 30-3-1999, it was also one of the cases that the accused had adulterated the diesel stored in the diesel tanks No. 1 and 2 by adding/mixing kerosene of blue colour in diesel. For that contravention, the learned Judge of the trial Court has given a finding on the point no. 2 in the negative i.e. against the State Government. The learned Judge of the trial Court has not recorded any separate finding with regard to acquittal of the accused for the offence relating to contravention of adulterating the diesel by adding blue coloured kerosene, but from the judgment it clearly appears that the learned Judge of the trial Court has acquitted the respondent for the offence relating to contravention of adding blue coloured kerosene. It is also an admitted fact that the State Government has not preferred any acquittal appeal against the judgment of the learned Judge of the trial Court, so far as it relates to the offence of adding blue kerosene in the diesel. Therefore, this present appeal is very much restricted only for quantum of sentence. The State Government has filed this present Criminal Appeal NO. 132 of 2000 for enhancement of the sentence on the ground that the sentence inflicted by the learned Judge of the trial Court is not adequate as per the provisions of Section 7 of the Act.

4. So far as this present Criminal Appeal is concerned, the learned Judge of the trial Court has convicted the accused- respondent for contravention with regard to non maintaining of the Density Register for the period from 10-7-1998 to 17-7-1998. The respondent had advanced his explanation for non maintaining of the Density Register. He had advanced his case that on or around 10-7-1998 he was busy for getting admission for his son and he had entrusted the work with regard to maintaining of the density Register to an employee of the petrol pump and in that circumstances, the Density Register could not be maintained only for seven days.

4.1 The learned Judge of the trial Court has considered the facts and circumstances of the case and ultimately he has come to a conclusion that it was a technical offence and it would not be just and proper to imprison the accused for a longer period. He has given reasons for awarding lesser sentence which is permissible under 7 of the Essential Commodities Act because the case of the accused falls under Section 7 (1) (a) (i) of the Act because contravention is with regard to clause (i) of Section 3 (2) of the Act, in which discretion has been

given to the learned Judge who presides over the Special Court constituted under the Act, for inflicting the sentence. As per Section 7 (1) (a) (i) of the Act if any contravention is found for Clause (i) of Section 3 (2) of the Act, the learned Judge of the Special Court can imprison the accused for a term which may extend to one year and shall also order to pay a fine. Under these circumstances, there is no minimum sentence prescribed for such contravention by which the accused can be convicted u/s 7 (1) (a) of the Act. The learned Judge of the trial Court has sentenced the respondent to undergo simple imprisonment for the period, till rising of the Court and to pay a fine of Rs.3,000/, i/d to undergo rigorous imprisonment for three months.

5. Looking to the facts and circumstances of the case and nature of the offence, more particularly conntravention of non maintaining of the Density Register for a short period of seven days, it cannot be said that sentence inflicted is too low. Moreover, subject with regard to passing of an order of the sentence, is a discretionary order and the learned Judge of the trial Court has taken into consideration all the facts and circumstances of this case. The Revisional Court generally should not interfere with the order which is a discretionary order. Mr. B.Y. Mankad, learned A.P.P. is unable to show as to how and under what circumstances the sentence should be enhanced. Secondly, the learned Judge of the trial Court has observed that the respondent was busy with regard to admission work of his son during that period and hence he could not maintain the Density Register. The Density Register was to be maintained by his employee as per his instructions.

6. Under these circumstances, this Court is of the view that the sentence is adequate and sufficient because the accused has already been punished. The accused has not preferred any appeal with regard to the aforesaid judgment of conviction and sentence dated 1-7-1999. Under these circumstances, this appeal is devoid of any merit and hence the same is required to be dismissed and accordingly it is dismissed. Rule is discharged.

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/JVSatwara/